

JUDGE DANIELS

12 CIV 1874

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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IMMIGRATION JUSTICE CLINIC OF THE  
BENJAMIN N. CARDOZO SCHOOL OF LAW

Plaintiff,

v.

U.S. DEPARTMENT OF STATE

Defendant.  
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**COMPLAINT FOR  
INJUNCTIVE RELIEF**

Case No.:



**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is a civil action for injunctive relief, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel immediate processing and disclosure by the United States Department of State of agency records responsive to the Plaintiff's request, and for such other relief as the court deems appropriate. Specifically, the Plaintiff seeks immigration-related documents of Youngchu Core, whom the Plaintiff represents in removal proceedings. (See Ex. A.)

**JURISDICTION AND VENUE**

2. This Court has personal and subject-matter jurisdiction to hear this claim under 5 U.S.C. § 552(a)(4)(B); 5 U.S.C. § 552(a)(6)(E)(iii); and 28 U.S.C. § 1331.

3. Venue lies in the Southern District of New York under 5 U.S.C. § 552(a)(4)(B).

## **PARTIES**

4. The Plaintiff, the Immigration Justice Clinic of the Benjamin N. Cardozo Law School (“the Clinic”), is a not-for-profit legal practice housed at Cardozo School of Law, in New York City, New York. The Clinic was founded in 2008 to provide pro bono legal representation to indigent immigrants in removal proceedings. Under the supervision of experienced practitioners, law students in the Clinic represent individuals and community-based organizations in public advocacy, lobbying, media, and litigation efforts. In carrying out this work in the interests of its individual clients and the public, the Clinic frequently collects government records and information about government activities.

5. The Defendant, the United States Department of State (“the Department”), is an executive branch agency of the United States government, as defined by 5 U.S.C. §§ 552(f) and 551(1). The Department maintains records concerning visa requests from non-citizens attempting to enter the United States as well as consular assistance given to United States citizens abroad.

## **STATEMENT OF FACTS**

### **A. Plaintiff’s FOIA Request Seeking Records Necessary to Ms. Core’s Immigration Case.**

6. On December 9, 2010, the Clinic submitted a FOIA request to the Department of State “for release of [the client Youngchu Core’s] immigration records, including any visa petition filed on her behalf, any records that indicate her Alien Number, and any records that show her legal entry into the United States.” (*See* Ex. A.) The Clinic also requested expedited processing of the request. (*Id.*)

7. The Clinic requested the records, and expedited processing of those records, to assist in establishing a defense to a charge of removability against Ms. Core in Immigration Court and to aid in having her released from Immigration and Customs Enforcement (ICE) detention.

8. Ms. Core is charged with being present in the United States without having been admitted or paroled. The Clinic believes that the Department may have records that contain information on how Ms. Core may have entered the country, and that those documents may establish a defense to the charge that Ms. Core entered the country illegally. The Department's failure to produce any documents has precluded the Clinic from obtaining information that would assist Ms. Core in her immigration proceedings. The Clinic's lack of access to such records places Ms. Core at risk of detention and deportation.

9. Due to Ms. Core's mental incompetence she has been unable to assist the Clinic in her own defense in her removal proceedings. Psychological examinations have found that Ms. Core suffers from severe and persistent mental illness and significant cognitive impairment, rendering her an unreliable personal historian, unable to provide the Clinic with even basic biographical information, such as her place of birth, how many children she has and their names, addresses of places she has lived, or her family's address or phone number. Similarly, she has been unable to provide reliable information related to her immigration status.

10. Although Ms. Core has been released from ICE custody, she remains in removal proceedings. The Immigration Judge, finding Ms. Core mentally incompetent and an unreliable source of even basic biographical information, terminated the proceedings. However, the Department of Homeland Security (DHS) has appealed to the Board of Immigration Appeals from the Immigration Judge's order to terminate.

11. Because Ms. Core's proceedings are still ongoing, and because the Immigration Judge's termination was without prejudice, the Clinic's need for the requested documents is as pressing now as it was at the time when the request was made.

**B. The Department's Violation of the Freedom of Information Act.**

12. On January 4, 2011, the Department denied the Clinic's request for expedited processing. (*See Ex. B.*)

13. On January 25, 2011, the Clinic timely appealed the Department's denial of expedited processing. In the appeal, the Clinic specifically cited a "compelling need for the information," arguing that Ms. Core's ongoing detention, lack of access to appropriate mental health treatment, and inability to assist in her own immigration proceeding constituted an "impairment of her due process rights and a harm to her substantial humanitarian interests." (*See Ex. C.*)

14. On March 11, 2011, the Department denied the Clinic's appeal from the denial of the Clinic's expedited processing request, informing the Clinic that Ms. Core's lack of access to medical care or documents to assist in her own defense did not meet any of the criteria for granting expedited processing. (*See Ex. D.*) The Department wrote that that "every effort" would be made to process the initial request in a "timely manner." (*Id.*)

15. On December 8, 2011, the Clinic appealed from the Department's failure to make a determination or disclose documents in a timely manner as required under 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(3)(A). (*See Ex. E.*)

16. On December 16, 2011, the Department informed the Clinic that the request was being processed and that the length of time necessary to process the request could not be predicted at the time the letter was issued. In this letter, the Department informed the Clinic of

its lack of administrative appeal options and its right to sue the Department in federal court. (*See* Ex. F.)

17. At the time of filing this complaint, approximately 447 days have passed since the Clinic filed the request.

18. The Department has failed to make a determination on the Clinic's request or disclose any of the requested records.

### **CAUSES OF ACTION**

#### **First Cause of Action**

##### **Violation of the Freedom of Information Act for Failure to Disclose Requested Records**

19. The Department's failure to disclose the requested records violated 5 U.S.C. § 552(a)(3)(A) and the Department's own regulation under 22 C.F.R. § 171.1.

20. The Department has failed to disclose any documents responsive to the Clinic's request as alleged in paragraphs 6–11 and 15–18.

21. The Clinic has exhausted its administrative remedies with regard to the Department's failure to disclose the requested records because the Department has failed to comply with the applicable time limits to respond to the Clinic's request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

#### **Second Cause of Action**

##### **Violation of the Freedom of Information Act for Failure to Make a Timely Determination**

22. The Department's failure to make a timely determination on the Clinic's request violated 5 U.S.C. § 552(a)(6)(A) and the Department's own regulation under 22 C.F.R. § 171.12(d).

23. The Department was obliged to make a determination on the Clinic's properly filed request within 20 days. *See* 5 U.S.C. § 552(a)(6)(A); 22 C.F.R. § 171.12(d). The Department has failed to fulfill this obligation as alleged in paragraphs 6–11 and 15–18.

24. The Department has twice acknowledged the Clinic's request and expressed its intention to process the request in a timely manner. (*See* Exs. D, F.) However, the Department has never communicated any decision on whether to comply with the request. (*See id.*) The Department's correspondence therefore did not qualify as a determination under FOIA. The Department conceded as much in its letter of December 16, 2011, stating that the Clinic "would not be required to appeal administratively before instituting suit in federal court." (*See* Ex. F.)

### **Third Cause of Action**

#### **Violation of the Freedom of Information Act for Failure to Grant Expedited Processing**

25. The Department's failure to grant the Clinic's request for expedited processing violated 5 U.S.C. § 552(a)(6)(E)(iii) and the Department's own regulation under 22 C.F.R. § 171.12(b).

26. Ms. Core's ongoing removal proceedings and detention in ICE custody demonstrated a compelling need for expedited processing of the Clinic's request as alleged in paragraphs 6–14.

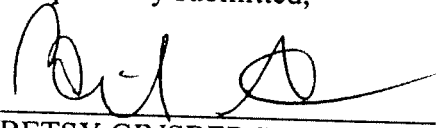
### **RELIEF REQUESTED**

27. The Plaintiff requests that the Court order injunctive relief pursuant to 5 U.S.C. § 552(a)(4)(B) to compel the Department to immediately disclose all agency records requested by the Plaintiff, and for such other relief as the Court deems appropriate. In light of the urgency

of the Plaintiff's request for the documents, as described in paragraphs 7-11, the Plaintiff also requests that the Court order the agency to expedite its processing of our request.

28. The Plaintiff requests an award of attorney fees and litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E).

Respectfully submitted,



BETSY GINSBERG (BG-9890)  
CAROLINE FUCHS, Legal Intern  
SAM SOLOMON, Legal Intern  
Kathryn O. Greenberg Immigration Justice  
Clinic  
Cardozo School of Law  
55 Fifth Avenue, 11th Floor  
New York City, New York 10003  
(212) 790-0871  
bginsbe1@yu.edu

3/13/12

Counsel for plaintiff

# **EXHIBIT A**



# CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

**KATHERINE O. GREENBERG**  
IMMIGRATION JUSTICE CLINIC

(212) 790-0895  
FAX (212) 790-0256

**Peter L. Markowitz**  
*Associate Clinical Professor of Law*  
Director

**Betsy Ginsberg**  
*Visiting Assistant Clinical Professor of Law*

**Bridget Kessler**  
*Clinical Teaching Fellow*

**Lindsay C. Nash**  
*Clinical Litigation Fellow*

December 9, 2010

Office of Information Programs and Services  
A/GIS/IPS  
U.S. Department of State, SA-2  
Washington, DC 20522-8001  
VIA: Regular Mail

Re: FOIA Request for Youngchu Core (SS: 229-41-2172, DOB: 05/05/1964)

Dear Sir or Madam:

We are students at the Cardozo School of Law Immigration Justice Clinic. We represent Youngchu Core in a removal proceeding, and are requesting a FOIA release of her immigration records, including any visa petition filed on her behalf, any records that indicate her Alien Number, and any records that show her legal entry into the United States.

Youngchu Core was born on 05/05/1964, in Dongduchon City, Kyonggi-do, Korea (possibly also Kimpo, South Korea). In 1986 she legally married a United States citizen, Herbert Llewellyn Core, in Seoul. Mr. Core's date of birth is 03/02/1965; place of birth is Southern Pines, North Carolina, USA. Mr. Core may have petitioned for his wife's immigrant visa sometime during the period of 1986 to 1990. The visa may have been issued at the embassy in Seoul.

Ms. Core's other aliases include Yóng Chu Yi, Suki Lee, and Youngchu Lee.

We do not have a case number. The visa was likely issued since Ms. Core either accompanied or followed her husband to the United States after their marriage.

The Immigration Justice Clinic provides pro bono representation to indigent clients, therefore we request a waiver of any fees associated with this request. We also request that the request be placed on the track for expedited processing, as our client is currently in removal proceedings before an immigration judge at 201 Varick Street in New York, NY.

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If you have any questions or concerns, please contact one of us at 212-790-0895, or via our email addresses: [dong@yu.edu](mailto:dong@yu.edu), [lefas@yu.edu](mailto:lefas@yu.edu).

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Lefas', written over a horizontal line.

Melissa Lefas, Law Student  
Tanying Dong, Law Student

I, Youngchu Core, DOB: May 5, 1964, do hereby swear under penalty of perjury that I am the individual whose records are being requested from the Department of State.

I authorize the Department of State, under penalty of perjury, to release my personal records to:

Immigration Justice Clinic  
Benjamin N. Cardozo School of Law  
55 Fifth Avenue, 11<sup>th</sup> Floor  
New York, NY 10003

Signed Y. Youngchu Core Dated 11/9/2010

I, Herbert L. Core, DOB: March 2, 1965, do hereby swear under penalty of perjury that I am the individual whose records are being requested from the Department of State.

I authorize the Department of State, under penalty of perjury, to release my personal records to:

Immigration Justice Clinic  
Benjamin N. Cardozo School of Law  
55 Fifth Avenue, 11<sup>th</sup> Floor  
New York, NY 10003

Signed Herbert L. Core Dated Dec/07/10

## **EXHIBIT B**



Dear Requester,

United States Department of State

Washington, D.C. 20520

JAN 4 2011

RE: Youngchu CORE

This is in response to your request dated 12/9/10. We have assigned Case Control Number 201008237 and will begin the processing of your request based upon the information provided in your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

We have considered your request of a fee waiver. A waiver or reduction of fees may be appropriate when the disclosure of records is in the public interest because the disclosure is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the interest of the requester. See 22 C.F.R. § 171.17. In light of the information supplied in your request, we will now defer our decision to grant or deny your request for a fee waiver until we are able to determine whether the disclosure of any records responsive to your request is in the public interest, consistent with the application of 22 C.F.R. § 171.17.

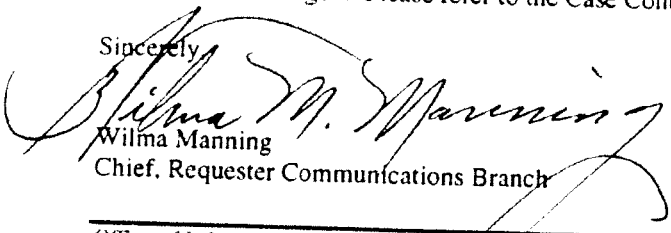
Our published regulations regarding expedition, 22 C.F.R. 171.12(b), require a specific showing of a compelling need. **Expedition processing is granted only in the following situations: (1) imminent threat to the life or physical safety of an individual; (2) urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity and the information is urgently needed in that a particular value of the information would be lost if not disseminated quickly; (3) substantial humanitarian reasons; and (4) loss of substantial due process rights.** Your request does not meet any of the established criteria. Regrettably, I must advise that you have not provided adequate justification for expedition. However, you may be assured that we will make every effort to process your request in as timely a manner as possible. For your convenience, I have enclosed a copy of the Department's expedition processing criteria.

If you wish to appeal the denial of expedition, you may write to the Chief, Requester Liaison Division, at the address below, within 30 days of receipt of this letter.

Unusual circumstances (including the number and location of Department components involved in responding to your request, the volume of requested records, etc.) may arise that would require additional time to process your request.

We will notify you as soon as responsive material has been retrieved and reviewed. Should you want to contact us, you may call our FOIA Requester Service Center at (202) 261-8484 or send an email to FOIAstatus@state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

  
Wilma Manning

Chief, Requester Communications Branch

Office of Information Programs and Services  
U.S. Department of State, SA-2  
Washington, DC 20522-8100  
Website: [www.foia.state.gov](http://www.foia.state.gov)

Inquiries:

Phone: 1-202-261-8484

FAX: 1-202-261-8579

E-mail: FOIAStatus@state.gov

**Fees:** The Freedom of Information Act (FOIA) provides that agencies may assess fees to recover the direct costs of processing requests, unless a fee waiver has been granted.

According to our regulations, by making a FOIA request, you have agreed to pay all applicable fees up to \$25 unless a fee waiver has been granted. You may specify a willingness to pay a greater amount. If the estimated fees exceed this limit, you will be notified.

\_\_\_\_ You have stated your willingness to pay the fees incurred in the processing of this request up to \$ \_\_\_\_.

☒ Please let us know if you are willing to pay the fees that will be incurred in the processing of your request. You may set a limit of the maximum amount that you wish to pay. Please be advised that, without an agreement to pay fees, your request will be processed without cost up to the required first 2 hours of search time (for all other requester category only) and duplication of the first 100 pages (for all other, media, educational and non-commercial scientific requester categories).

Based upon the information that you have provided, we have placed you in the requester category checked below. This request will be processed in accordance with the fee schedule designated for that category (see 22 C.F.R. 171, enclosed).

\_\_\_\_ Commercial Use Requesters – Charges may be assessed that recover the full direct costs of searching for, reviewing for release, and duplicating the record(s) sought.

\_\_\_\_ Educational Institution Requesters – Charges may be assessed that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.

\_\_\_\_ Non-commercial Scientific Institution Requesters – Charges may be assessed that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.

\_\_\_\_ Representatives of the News Media – Charges may be assessed that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.

☒ All Other Requesters – Charges may be assessed that recover the full reasonable direct cost of searching for and duplicating the record(s) sought, after the first 100 pages of duplication, and the first two hours of search time.

\_\_\_\_ You have indicated your inclusion in a category different than the one indicated above. Please forward the information requested on the enclosed sheet titled "Requester Categories" to substantiate your inclusion in a particular category of requester.

We will notify you of the costs incurred in processing your request as soon as the search for, and review of, any responsive documents have been completed.

# **EXHIBIT C**



# CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

KATHRYN O. GREENBERG IMMIGRATION JUSTICE CLINIC

Peter L. Markowitz  
*Associate Clinical Professor of Law  
Director*

Betsy Ginsberg  
*Visiting Assistant Clinical Professor of Law*

Bridget Kessler  
*Clinical Teaching Fellow*

Lindsay C. Nash  
*Clinical Litigation Fellow*

(212) 790-0895  
FAX (212) 790-0256

January 25, 2011

Chief, Requester Liaison Division  
Office of Information Programs and Services  
U.S. Department of State, SA-2  
Washington, DC 20522-8100  
VIA: Regular Mail

Re: Appeal of denial of FOIA expedition of Youngchu Core, Case Control  
Number 201008237

Dear Sir or Madam:

We write pursuant to 22 C.F.R. 171.50 to appeal the denial of our request for expedited processing in our FOIA request regarding Youngchu Core, Case Control Number 201008237, whom we represent in removal proceedings. Requests shall be given expedited treatment whenever a requester has demonstrated that a compelling need for the information exists. 22 C.F.R. 171.12(b). A compelling need is deemed to exist where the requester can demonstrate that failure to obtain requested information on an expedited basis could reasonably be expected to: pose an imminent threat to the life or physical safety of an individual; impair substantial due process rights; or harm substantial humanitarian interests. 22 C.F.R. 171.12(b)(1). Ms. Core's situation is an impairment of her due process rights and a harm to her substantial humanitarian interests.

Ms. Core's detention constitutes an impairment of her due process rights. She is charged with entering without inspection, but we have reason to believe that she entered the country legally and has an alien number other than the one generated for her when she was placed in removal proceedings. We made the initial FOIA request on December 9, 2010 for her immigration records, including any visa petitions filed on her behalf, any records that indicate her alien number or show her legal entry into the United States. We believe that these

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documents, if they exist, could provide information on how she entered the country, and possibly help to defend against the government's claim that she entered illegally.

Ms. Core's continued detention constitutes a harm to her substantial humanitarian interests because she is suffering from a persistent and severe mental illness. She has been held in immigration detention since June of 2010. She requires treatment at a psychiatric facility and is not receiving such treatment with the detention facility's limited medical resources. (*See attached* Psychiatric Evaluation from Dr. Elizabeth Owen). She was found unfit to proceed on a trespassing charge on May 24, 2010, and should have been placed in a hospital for treatment instead of in immigration detention. (*See attached* Examination Reports from Dr. Murray Gordon and Dr. Tara Straka). Obtaining documents that could aid in her release is an urgent priority, as we would then be able to place her in a proper treatment facility.

Because Ms. Core meets two of the criteria enumerated in 22 C.F.R. 171.12(b)(1) to warrant expedited processing, we respectfully ask that our FOIA request be expedited.

If you have any questions or concerns, please contact one of us at 212-790-0895.

Sincerely,

Tanying Dong, Law Student  
Melissa Lefas, Law Student

Encl: Psychiatric Evaluation by Dr. Elizabeth Owen; Examination Reports from Dr. Murray Gordon and Dr. Tara Straka

## UPS CampusShip: Shipment Label

Page 1 of 1

## UPS CampusShip: View/Print Label

1. **Print the label(s):** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.

3. **GETTING YOUR SHIPMENT TO UPS****Customers without a Daily Pickup**

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.


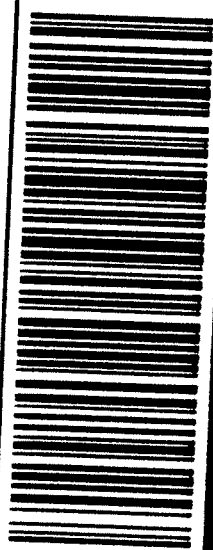

Hand the package to any UPS driver in your area.

Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services<sup>SM</sup> (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

**Customers with a Daily Pickup**

Your driver will pickup your shipment(s) as usual.

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IMMIGRATION JC - TANYING DONG 212 790-0411 CARDOZO SCHOOL OF LAW 55 5TH AVENUE NEW YORK, NY 10003  <b>SHIP TO:</b> CHIEF, REQUESTER LIAISON DIVISION OFFICE OF INFORMATION PROGRAMS-SERVIC US DEPT. OF STATE, SA -2 WASHINGTON DC 20522-8100	1 OF 1  0.0 LBS LTR  <b>MD 201 9-89</b> 	<b>UPS NEXT DAY AIR</b> TRACKING #: 1Z 83X 7X6 01 9920 6389		BILLING: P/P  Reference # 1: 2-035-0136   CS 11.0.20. WASHINGTON 12 04 01/2011
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UPS: Tracking Information

Page 1 of 1



## Delivery Notification

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

**Tracking Number:** 1Z 83X 7X6 01 9920 638 9  
**Reference Number(s):** 2-035-0136  
**Service:** NEXT DAY AIR  
**Shipped/Billed On:** 01/25/2011  
**Delivered On:** 01/26/2011 10:03 A.M.  
**Delivered To:** 2201 C ST NW  
WASHINGTON, DC, US 20520  
**Signed By:** MCLAIN  
**Location:** MAIL ROOM

Thank you for giving us this opportunity to serve you.

Sincerely,  
UPS

Tracking results provided by UPS: 01/26/2011 3:20 P.M. ET

# **EXHIBIT D**



United States Department of State

Washington, D.C. 20520

MAR 11 2011

Case Number: 201008237

Melissa Lefas  
Cardozo Law  
Brookdale Center  
55 Fifth Avenue  
Suite 1109  
New York, New York 10003-4391

Dear Ms. Lefas:

This is in response to your Freedom of Information Act (FOIA) request, dated December 9, 2010. Specifically this letter addresses your appeal of our denial of expeditious processing which was dated January 25, 2011.

We have considered your appeal of the denial of expeditious processing. Our published regulations regarding expedition, 22 C.F.R. 171.12(b), require a specific showing of a compelling need. **Expeditious processing is granted only in the following situations:**

- (1) Imminent threat to the life or physical safety of an individual;
- (2) Urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity and the information is urgently needed in that a particular value of the information would be lost if not disseminated quickly;
- (3) Substantial humanitarian reasons; and
- (4) Loss of substantial due process rights.

Your request and appeal do not meet any of the established criteria.

Regrettably, I must advise that you have not provided adequate justification for expedition and I must uphold the decision to deny expeditious processing. However, you may be assured that we will make every effort to process your request in as timely a manner as possible.

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Office of Information Programs and Services  
U.S. Department of State, SA-2  
Washington, DC 20522-8100  
Website: [www.foia.state.gov](http://www.foia.state.gov)

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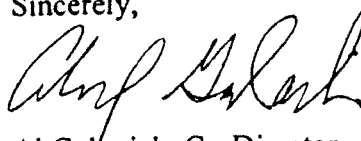
Inquiries:  
Phone: 1-202-261-8484  
FAX: 1-202-261-8579  
E-mail: [FOIAStatus@state.gov](mailto:FOIAStatus@state.gov)

- 2 -

For further communications, please note our contact information at the bottom of this page. You may also refer to our website for general information and guidelines. We can provide faster service if you include your request case number **201008237** in your communications with us.

We are pleased to be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Al Galovich', written in a cursive style.

Al Galovich, Co-Director  
Requester Liaison Division

# **EXHIBIT E**



# CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

KATHRYN O. GREENBERG IMMIGRATION JUSTICE CLINIC

Peter L. Markowitz  
Associate Clinical Professor of Law  
Director

Betsy Ginsberg  
Visiting Assistant Clinical Professor of Law

Sonia R. Lin  
Clinical Teaching Fellow

(212) 790-0895  
FAX (212) 790-0256

Dec. 8, 2011

Office of Information Programs and Services  
A/GIS/IPS  
U.S. Department of State, SA-2  
Washington, DC 20522-8001  
VIA: Regular Mail

Re: FOIA Appeal of Case Control Number 201008237

Dear Sir or Madam:

We write to appeal the Department of State's failure to timely provide documents pursuant to our request under the Freedom of Information Act, case control number 201008237, on behalf of our client, Youngchu Core.

Our request was made December 9, 2010. (For your reference, a copy of our original request is enclosed.)

The Freedom of Information Act requires a determination to be made on a FOIA request within 20 days. 5 U.S.C. § 552(a)(6)(A) (2006). If the agency to which the request has been made requires additional time because of "unusual circumstances," then the agency may extend the time limits by issuing a written notice to the requester. *Id.* at (a)(6)(B). "Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph." *Id.* at (a)(6)(C). After exhausting administrative remedies, a requester may appeal to the agency. *Id.* at (a)(6)(A).

Constructive denial of a FOIA request has been found where an agency fails within the prescribed time period to respond to the request with (1) a determination of whether the agency will comply with the request; (2) the agency's reasoning for its determination; (3) notice of the

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requester's right to appeal an adverse determination. *See Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990).

As of the date of this letter, the Department has not provided no determination nor any documents in response to our request. Therefore, our request has been constructively denied and we hereby appeal.

If you have any questions or concerns, please contact one of us at 212-790-0895.

Sincerely,

Sam Solomon, law student  
Caroline Fuchs, law student  
Betsy Ginsberg, Esq., supervising attorney

Enclosed: Original request.

# **EXHIBIT F**



United States Department of State

Washington, D.C. 20520

December 16, 2011

Sam Solomon  
Cardozo Law  
Brookdale Center  
55<sup>th</sup> Avenue, Suite 1109  
New York, NY 10003-4391

Dear Mr. Solomon:

Thank you for your letter of December 8, 2011, concerning Freedom of Information request number 201008237, in which you note that the Department of State has not yet responded to your FOIA request.

Your FOIA request is not subject to administrative appeal at this time, since no specific material has been denied in response to the request. Section (a)(6)(C) of the Act provides that a requester shall be deemed to have exhausted his administrative remedies if an agency fails to respond within the applicable time limit specified in the paragraph, which is twenty days. The requester, therefore, would not be required to appeal administratively before instituting suit in federal court. This provision does not, however, provide a basis for an administrative appeal of a request that is still being processed. Moreover, the lack of response is not the same as a response indicating that no documents were found.

I have confirmed that your request is being processed, but I am unable to predict the length of time before action on it will be completed. The Department receives thousands of FOIA and PA requests a year and yours will be processed in turn. I have sent a copy of your letter to the office that has been assigned responsibility for processing your request. Your continued patience is appreciated. If you need further assistance, you may contact the FOIA Requester Service Center at (202) 261-8484 or [FOIAstatus@state.gov](mailto:FOIAstatus@state.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Lori Hartmann".

Lori Hartmann

Appeals Officer

Office of Information Programs and Services